

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 20 2007

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ATKINSON, HASKINS, NELLIS,)
BRITTINGHAM, GLADD &)
CARWILE, a Professional Corporation,)

Plaintiff,)

v.)

No.)

07 CV - 533 JHP - FHM

UNITED STATES CONSUMER)
PRODUCTS SAFETY COMMISSION,)

Defendant.)

COMPLAINT

JURISDICTION AND VENUE

1. This action and jurisdiction over it arrives from the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B), as amended, (hereinafter "FOIA"); the First and Fifth Amendments to the Constitution of the United States; the Administrative Procedure Act, 5 U.S.C. § 701, *et. seq.* as amended; the Consumer Product Safety Act, 15 U.S.C. § 2054 *et. seq.*, 28 U.S.C. § 1331; and the equitable powers inherent in the Courts of the United States.

2. Plaintiff resides in Tulsa County, Oklahoma. Venue is therefore proper before this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff is a professional corporation incorporated in the State of Oklahoma, with its principle place of business in Tulsa County, Oklahoma.

4. Defendant, United States Consumer Products Safety Commission (hereafter "CPSC"), is an agency of the Executive Branch of the United States and is a proper party within the meaning

*(Fees paid)
5/12*

of 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. §§ 702 and 703. Defendant agency has possession, custody and control over the documents to which Plaintiff seeks access and which are the subject matter of this action.

FIRST CAUSE OF ACTION

REFUSAL TO PRODUCE DOCUMENTS

5. Plaintiff represents a number of children in products liability actions against designers, manufacturers, and distributors of Royal brand paper shredders, including but not limited to Joe and Lindsay Eremita, the parents and next friends of a small child whose fingers were amputated by a Royal Model VF-800 paper shredder. Plaintiff represents children injured by several other models of Royal paper shredders, including but not limited to the Royal 7x cross-cut shredder, the Royal HT 500X and the VF 700. Plaintiff is aware of numerous complaints to the Consumer Products Safety Commission regarding various models of Royal brand paper shredders, and is aware of the CPSC's correspondence with Royal and investigation of various models of Royal brand paper shredders.

6. On February 22, 2006, Plaintiff made a written request under the FOIA for documents in its possession, custody or control related to the VF-800 crosscut paper shredder. Plaintiff's written request is attached hereto and incorporated herein as Ex. "1". As discussed in further detail in Ex. "1", Plaintiff's request of February 22, 2006 generally sought documents in CPSC's possession, custody or control regarding any evaluation of potential defects in the Royal VF-800 cross-cut paper shredder; documents, evaluations or opinions promulgated by the CPSC regarding the Royal VF-800; documents regarding any investigation of hazards presented by the Royal VF-800; documents, opinions or evaluations of potential hazards to consumers of any paper shredder

designed, marketed or manufactured or distributed by Royal Consumer Information Products for the years 1980 to present; any information regarding similar accidents or injuries caused by the Royal VF-800 cross-cut paper shredder, and all correspondence between the CPSC and Royal Consumer Information Products related to the Royal VF-800 cross-cut paper shredder.

7. On February 23, 2006, Plaintiff supplemented his request to the CPSC. Plaintiff's written supplement is attached hereto and incorporated herein as Exhibit "2". Plaintiff's supplemental request sought the same information requested on February 22, 2006, regarding to three other similar models of Royal paper shredders also known to injure children, the Royal 7X, the Royal HT500X, and the Royal VF-700X cross-cut papers shredders, as well as any and all notes and/or other documentation pertaining to conversations between anyone at the CPSC and Royal Consumer Information Products regarding the HT500X, the Royal 7X, Royal VF-700, and Royal VF-800.

8. On April 21, 2006, Defendant CPSC partially denied Plaintiff's FOIA requests. Defendant's written denial of Plaintiff's request for information is attached hereto and incorporated herein as Exhibit "3". Ex. "3" appears to pertain to Plaintiffs' original and supplemental request regarding multiple models of Royal shredders. Though the CPSC stated information responsive to Plaintiff's request had been withheld, the CPSC does not identify which models of shredders were under investigation, whether particular investigative files exist regarding these individual shredders, when the investigations commenced, who conducted these investigations or any other information which would assist in identifying the documents withheld. The CPSC provided no Vaughn index or any other document containing sufficient detail which would allow this Plaintiff to determine whether the exemptions to production the CPSC claimed over the documents at issue are truly

applicable.

9. On April 28, 2006, Plaintiff received a second letter from the Consumer Products Safety Commission following a telephone conversation between Plaintiff and the CPSC, in which the CPSC represented that it had reopened Plaintiff's request dated February 23, 2006. The CPSC's letter of April 28, 2006 is attached hereto as Exhibit "4" and incorporated by reference herein.

10. On May 11, 2006, the CPSC again denied Plaintiff's FOIA request. Defendant's written denial of Plaintiff's request for information of May 11, 2006 is attached hereto and incorporated herein as Exhibit "5". The CPSC identified the subject of Plaintiff's request, and denial, as "Royal HT500X, Royal 7X and Royal VF-700 Cross-cut Paper Shredders/Complaints, Reported Incidents and Investigations of Incidents and Commission's Office of Compliance Corrective Action or Recall Files." The CPSC maintained it must withhold all of the documents requested, as they pertained to "active litigation and law enforcement investigatory files or corrective action or recall files, CA040012 and RP040071, Royal paper shredders, Model 7X and HT500X and Royal 7," pursuant to the various exemptions cited therein. The CPSC provided no Vaughn index or other source of sufficient information to determine whether the blanket exemptions claimed are genuinely applicable. The CPSC makes no reference to requested information regarding the VF 800 or VF 700 and gives no explanation as to why documents related to those shredders, if any exist, would not be produced.

11. On May 25, 2006, Plaintiff timely submitted its written appeal of the Consumer Products Safety Commission's denial of access to records under FOIA with respect to its February 22, 2006 request and February 23, 2006 supplement, in accordance with 16 C.F.R. § 1015.7, directed to FOIA Appeal, General Counsel, Attention: Office of the Secretary, U.S. Consumer Products

Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408. Plaintiff's written appeal from the CPSC's denial of his request for information is attached hereto and incorporated herein as Exhibit "6".

12. On June 27, 2006, General Counsel Page C. Faulk for the Defendant CPSC affirmed the CPSC's denial of Plaintiff's Freedom of Information Act request in two separate letters, addressing Plaintiffs' February 22, 2006 request and February 23, 2006 supplemental requests. Those denials are substantially similar, and are attached hereto as Exhibit "7" and "8" and incorporated by reference herein. Each response affirms the CPSC's denials of information regarding the VF-800, VF 700, HT 500X and Royal 7X cross-cut shredders, pursuant to 5 U.S.C. § 522(b)(3), (b)(5) and (b)(7)(A).

13. The CPSC's denial of Plaintiff's administrative appeal with respect to Plaintiff's supplemental request for information regarding the VF 700, HT 500X and Royal 7X, or other models of Royal shredders, Ex. "8" is based on its contention that the responsive documents in investigation file CA040012 and RP040071 are cases that are still open or under investigation. The CPSC has failed to provide any information as to which models of shredders are being investigated, who is conducting these investigations, when the investigations were begun, when and if they have closed or resulted in any decision or action, the purpose of these investigations, or any other detail sufficient to evaluate the CPSC's blanket assertion of exemptions to disclosure of the documents requested. The CPSC's denial of Plaintiff's request regarding the VF 800, Ex. "7" does not identify any pending investigatory file or agency action regarding the VF 800, yet asserts the same objections as those asserted to production of CPSC files CA040012 and RP040071.

14. The CPSC relies upon FOIA exemptions 3, 5 and 7A, or 5 U.S.C. § 552(b)(3), (b)(5)

and (b)(7)(A) in its denial of Plaintiff's administrative appeal. The CPSC claimed in its denial of Plaintiff's administrative appeal that Exemption 3 entitles it to withhold information exempted from disclosure by provisions of the Consumer Products Safety Act, which pertains to disclosure of trade secrets or other confidential commercial information. Defendants have failed to provide sufficient information to test their blanket assertion of Exemption 3, 5 U.S.C. § 552(b)(3), or to confirm the information withheld is truly contains information which may not be disclosed under any circumstance. Defendants have also failed to provide sufficient information to support their contention that disclosure of the information in their possession, custody or control regarding the subject shredders is likely to impair the government's ability to obtain necessary information in the future, or cause substantial harm to the competitive position of Royal Consumer Information Product or any other responding party.

15. In its denial of Plaintiff's administrative appeal, and its reliance upon Exemption 3 of the FOIA, the CPSC makes clear that its basis for withholding the information under that exemption is not based upon an objection by the manufacturer, but rests purely the fact it had not yet taken the appropriate steps to notify the manufacturer before producing, as directed by the Consumer Product Safety Act. The CPSC failed to provide any explanation as to why it was unable at the time of Plaintiff's request to notify the manufacturer and begin that process. The CPSC has failed to give sufficient information for Plaintiff to determine whether the information the CPSC is seeking to protect requires such steps prior to production of the information. The CPSC has merely asserted a blanket objection to production, contrary to law and the policy of disclosure inherent to the FOIA.

16. In its denial of Plaintiff's CPSC's appeal, the CPSC also claimed protection of the documents under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), which it claims provides for the

“withholding of certain inter-agency and intra-agency documents which would not be available by law to a party in litigation with the agency.” Though the CPSC purports to recognize that this claimed privilege protects only opinions and recommendations in a document and not factual information, the CPSC claims facts were withheld because they were “inextricably intertwined with the exempt portions” and has made no attempt at redacting factual information from the documents. The CPSC has not given sufficient detail from which it can be determined whether any document in its possession was prepared by the agency, its attorneys, is predecisional, or was in anticipation of litigation, or any other detail necessary to determine whether the CPSC has appropriately applied Exemption 5 to the documents requested. The CPSC ignored Plaintiff’s requests for such additional information with which to consider whether the CPSC’s asserted exemptions are valid.

17. In its denial of Plaintiff’s administrative appeal, the CPSC also asserted the documents sought were protected under Exemption 7, 5 U.S.C. § (b)(7), claiming that exemption 7(A) of the FOIA provides “for the withholding of investigatory information compiled for law enforcement purposes, but only to the extent that production of such information could interfere with enforcement proceedings.” The CPSC has provided no information which would identify whether the documents were promulgated for law enforcement purposes, as opposed to administrative purposes, and has failed to disclose the basis of its decision that production would interfere with a pending investigation. The CPSC has failed to provide sufficient detail to allow Plaintiff to determine whether the documents requested have been properly withheld under Exemption 7.

18. In its assertion of Exemption 7(A), the CPSC has not even identified what investigations are pending, and whether investigations are pending as to all models referenced in Plaintiff’s request. Plaintiff believes that at least two investigations referenced by the CPSC may

be closed or concluded, or at the very least, have passed the point of investigation in which the CPSC may legitimately claim disclosure would chill the manufacturer's cooperation with the investigation. Plaintiff is aware that the CPSC has already requested Royal Consumer Information Products to voluntarily recall 7X and the HT500X, based upon its determination the shredders pose a danger to children. It would seem the CPSC has reached a decision in the case of the 7X and HT500X, or has reached a point where disclosure of information regarding the investigation would not legitimately chill any party's cooperation with the CPSC. Further, the CPSC has not provided sufficient information to determine whether investigation of any other model of Royal shredder may have reached a similar stage. The CPSC has failed to provide sufficient information to determine whether some or all of the documents requested by Plaintiff, and withheld under Exemption 7, are exempted from disclosure under FOIA.

19. Within the information which the CPSC has apparently refused to provide in its denial of Plaintiff's administrative appeal, is information regarding the VF-800 shredder, which injured the child of Plaintiff's clients, Joe and Lindsay Eremita. The CPSC specifically took the Eremita's VF-800 shredder for testing, suggesting the CPSC must have a file or documents regarding the VF 800. Yet, the CPSC makes no reference to the VF 800 in its denial of Plaintiff's administrative appeal, or to a pending investigation of the VF 800, and does not indicate what information regarding the VF 800 has been withheld, if any. Not only does the CPSC's denial appear to ignore the VF 800, but its denial of information to Plaintiff regarding tests of a specific shredder which belonged to Plaintiff's clients, the Eremitas, and which was supplied to the CPSC by the Eremitas is inappropriate.

20. The CPSC is also withholding information regarding certain CPSC shredders, which

appears to have already been provided, in whole or in part, to the manufacturer, marketer, distributor, and/or designer, Royal Consumer Information Products. Royal has produced to Plaintiff, in various civil actions against Royal correspondence regarding the CPSC's November 2004 request that Royal voluntarily recall the HT500X and the Royal 7X, due to its danger to children, as well as a report by Royal to the CPSC made in May 2004, pursuant to 15 U.S.C. § 2084, identifying multiple injuries to children by Royal shredders. Royal representatives have testified in other civil actions regarding the CPSC's decision regarding the HT500X and the Royal 7X and its investigation. At least with respect to the HT500X and the 7X, the CPSC is seeking to preclude Plaintiff from learning of agency decisions already disclosed to Royal Consumer Information Products. There can be no legitimate assertion by the CPSC that disclosure of information regarding its investigation to Plaintiff will hinder its investigation with Royal, when Royal has already been informed of its findings, at least with respect to the HT500X and the 7X. Plaintiff has not been provided sufficient information to determine whether the CPSC has provided Royal with similar findings regarding any other model of shredder.

21. CPSC's General Counsel's affirmance of the CPSC's denial of the Plaintiff's FOIA administrative appeal rests solely on unexplained and conclusory reliance on the above-noted exemptions stated in 5 U.S.C. § 552(b)(3), (b)(5), and (b)(7)(A). The CPSC has failed to provide the detail necessary for Plaintiff to challenge its assertions of exemptions under FOIA, or the Consumer Product Safety Act. The CPSC's blanket assertion of FOIA exemptions, without adequate detail, is not consistent with the purposes of the FOIA and the public's right to information.

22. Defendant CPSC fails to take into account the public's interest in access to the information requested by Plaintiff in the Plaintiff's FOIA request.

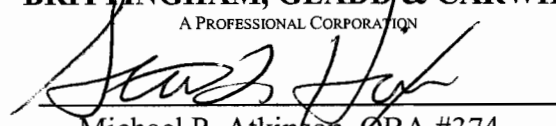
23. Defendant CPSC's failure to produce the documents requested and denial of Plaintiff's administrative repeal was arbitrary and capricious. As a result of the acts and omissions of the Defendant described in Paragraph 1 through 22 above, Plaintiff has been denied his right of access to the documents Plaintiff has requested. Plaintiff has exhausted Plaintiff's administrative remedies under both the Freedom of Information Act, the Administrative Procedure Act, and 16 C.F.R. § 1015.7. Plaintiff is suffering grave and irreparable injury, entitling Plaintiff has a right to judicial relief of this Court

WHEREFORE, Plaintiff respectfully requests an Order of this Court for the following judgment:

1. Ordering Defendant CPSC to produce all documents not previously produced which are responsive to Plaintiff's request of February 22, 2006, and his supplemental request of February 23, 2007, including but not limited to the investigative files referred to as CA040012 and RP040071.
2. Awarding Plaintiff costs, disbursements, and reasonable attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(B); and
3. Ordering such other and further relief as may be equitable, just and appropriate.

Respectfully submitted,

**ATKINSON, HASKINS, NELLIS,
BRITTINGHAM, GLADD & CARWILE**
A PROFESSIONAL CORPORATION



Michael P. Atkinson, OBA #374
Gabe W. Lawson, OBA #18956
Stacie L. Hixon, OBA #19477
1500 ParkCentre
525 South Main
Tulsa, OK 74103-4524
Telephone: (918) 582-8877
Facsimile: (918) 585-8096

**ATKINSON, HASKINS, NELLIS,
BRITTINGHAM, GLADD & CARWILE**

MICHAEL P. ATKINSON*
WALTER D. HASKINS*
GREGORY D. NELLIS*
GALEN L. BRITTINGHAM*
JOHN S. GLADD
JOHN J. CARWILE
WILLIAM A. FIASCO
JAMES N. EDMONDS
MARK W. MAGUIRE
JENNIFER R. ANNIS
MARTHA J. PHILLIPS
MARTHANDA J. BECKWORTH
ERIC J. BEGIN

A PROFESSIONAL CORPORATION
ATTORNEYS
1500 PARKCENTRE
525 SOUTH MAIN
TULSA, OKLAHOMA 74103-4524
TELEPHONE (918) 582-8877
E-MAIL: ahnmail@ahn-law.com
FAX (918) 585-8096

CAROL J. ALLEN
GABE W. LAWSON
RACHEL D. PARRILLI
ANDREW C. JAYNE
J. CRAIG BUCHAN
STACIE L. HIXON
JAMIE A. ROGERS
CHRISTY M. WATKINS
ANTHONY F. GOROSPE

OF COUNSEL
K. CLARK PHIPPS**


MEDICAL STAFF
BEVERLY J. RUBINO, M.D.
(NOT LICENSED TO PRACTICE LAW)

*PROFESSIONAL CORPORATION
*ALSO ADMITTED IN TEXAS

February 22, 2006

VIA FACSIMILE: 301-504-0127

Consumer Product Safety Commission
Office of the Secretary
ATTN: Todd Stevenson
4330 East West Highway
Bethesda, Maryland 20814

Re:  Eremita
Our File No. 334-378

Dear Mr. Stevenson:

I am writing to make a request for information for information under the Freedom of Information Act, pursuant to 5 U.S.C. §552 and 16 C.F.R. §1015.20. I represent Plaintiffs in a products liability action against designers, manufacturers, and distributors of a Royal VF-800 cross-cut paper shredder. The above action concerns an instance in which the subject paper shredder amputated the fingers of a small child. The shredder had no guard to prevent ingestion of small hands by the feeding mechanism and no warning for potential danger to small hands reaching the feeding mechanism.

Specifically, we are seeking information as follows:


1. Any information relevant to evaluation of potential defects in the Royal VF-800 cross-cut paper shredder;
2. Any documents, evaluations, or opinions promulgated by your agency in an evaluation of the Royal VF-800 cross-cut paper shredder;



3. Any documentation or information in your possession concerning any investigation of hazards presented by the Royal VF-800 cross-cut paper shredder for the years 2000 to the present, including, but not limited to, any evaluation of whether a guard on the feeding mechanism of the shredder should have been used to prevent injury to small fingers, whether your agency determined that the shredder was defective because of the failure to include any such guard, or any evaluation by your agency as to the adequacy of the warnings to users with small hands included with the Royal VF-800 cross-cut paper shredder or any reference to any failure of Royal to include sufficient warnings with the Royal VF-800 cross-cut paper shredder.
4. We request any documents, opinions, or evaluations of potential hazards to consumers of any paper shredder design, marketed, manufactured, or distributed by Royal Consumer Information Products for the years 1980 to the present, including by not limited to, any hazard associated with the feeding mechanism and any failure to include a proper guarding mechanism on the feeder to protect the hands of consumer.
5. Any and all information regarding other similar incidents/injuries caused by the Royal VF-800 cross-cut paper shredder.
6. Any and all correspondence between Consumer Product Safety Commission and Royal Consumer Information Products relating to the Royal VF-800 cross-cut paper shredder.

We appreciate your assistance in this matter, and look forward to receiving the information requested. I understand that fees may be incurred in processing our request. Please bill this office for any fees incurred. However, please advise in advance of process the request if it appears that fees will exceed \$1,000.00. Because time is of the essence in this matter, if you are in need of any additional information from this firm to process our request, I would ask that you contact me as soon as possible so that I can comply with your request.

Very truly yours,



Gabe W. Lawson

GWL/jja

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ATKINSON, HASKINS, NELLIS,
BRITTINGHAM, GLADD & CARWILE

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A PROFESSIONAL CORPORATION
ATTORNEYS
1500 PARKCENTRE
525 SOUTH MAIN
TULSA, OKLAHOMA 74103-4524
TELEPHONE (918) 582-8877
E-MAIL: ahnmail@ahn-law.com
FAX (918) 585-8096

CAROL J. ALLEN
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OF COUNSEL
K. CLARK PHIPPS*

MEDICAL STAFF
BEVERLY J. RUBINO, M.D.
(NOT LICENSED TO PRACTICE LAW)

*PROFESSIONAL CORPORATION
*ALSO ADMITTED IN TEXAS

February 23, 2006

VIA FACSIMILE: 301-504-0127

Consumer Product Safety Commission
Office of the Secretary
ATTN: Todd Stevenson
4330 East West Highway
Bethesda, Maryland 20814

Re: [REDACTED] Eremita
Our File No. 334-378

Dear Mr. Stevenson:

I am writing to make a supplemental request for information under the Freedom of Information Act, pursuant to 5 U.S.C. §552 and 16 C.F.R. §1015.20. I represent Plaintiffs in a products liability action against designers, manufacturers, and distributors of a Royal VF-800 cross-cut paper shredder. The above action concerns an instance in which the subject paper shredder amputated the fingers of a small child. The shredder had no guard to prevent ingestion of small hands by the feeding mechanism and no warning for potential danger to small hands reaching the feeding mechanism.

Specifically, the supplemental information we are seeking is as follows:

1. Any information relevant to evaluation of potential defects in the Royal HT500X, Royal 7X, or Royal VF-700 cross-cut paper shredders;
2. Any documents, evaluations, or opinions promulgated by your agency in an evaluation of the Royal HT500X, Royal 7X, or Royal VF-700 cross-cut paper shredders;



3. Any documentation or information in your possession concerning any investigation of hazards presented by the Royal HT500X, Royal 7X, or Royal VF-700 cross-cut paper shredder for the years 2000 to the present, including, but not limited to, any evaluation of whether a guard on the feeding mechanism of the shredder should have been used to prevent injury to small fingers, whether your agency determined that the shredder was defective because of the failure to include any such guard, or any evaluation by your agency as to the adequacy of the warnings to users with small hands included with the Royal HT500X, Royal 7X, or VF-700 cross-cut paper shredder or any reference to any failure of Royal to include sufficient warnings with the Royal HT500X, Royal 7X, or VF-700 cross-cut paper shredder.
4. We request any documents, opinions, or evaluations of potential hazards to consumers of any paper shredder designed, marketed, manufactured, or distributed by Royal Consumer Information Products for the years 1980 to the present, including by not limited to, any hazard associated with the feeding mechanism and any failure to include a proper guarding mechanism on the feeder to protect the hands of consumer.
5. Any and all information regarding other similar incidents/injuries caused by the Royal 7X, Royal HT 500X, or Royal VF-700 cross-cut paper shredder.
6. Any and all correspondence between Consumer Product Safety Commission and Royal Consumer Information Products relating to the Royal HT500X, Royal 7X, or VF-700 cross-cut paper shredder.
7. Any and all notes and/or other documentation pertaining to conversations between anyone at the CPSC and Royal Consumer Information Products (inclusive of any employees of Royal and/or their attorneys) pertaining to the Royal HT500X, Royal 7X, Royal VF-700, and Royal VF-800.

We appreciate your assistance in this matter, and look forward to receiving the information requested. I understand that fees may be incurred in processing our request. Please bill this office for any fees incurred. However, please advise in advance of process the request if it appears that fees will exceed \$1,000.00. Because time is of the essence in this matter, if you are in need of any additional information from this firm to process our request, I would ask that you contact me as soon as possible so that I can comply with your request.

Very truly yours,



Gabe W. Lawson

GWL/jja

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APR 27 2006
 MPA GWL
 Atkinson, Haskins, Nellis,
 Brittingham, Gladd & Carwile

U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
 BETHESDA, MD 20814-4408

April 21, 2006

CERTIFIED MAIL

Mr. Gabe W. Lawson
 Atkinson, Haskins, Nellis, Brittingham
 Gladd & Carwile
 1500 Parkcentre, 525 South Main
 Tulsa, OK 74103-4524

**Re: FOIA Request S6020124: Royal Consumer Information Products Paper Shredder /
 Complaints, Report Incidents, Investigation of Incidents and Office of Compliance
 Corrective Action File.**

Dear Mr. Lawson:

Thank you for your Freedom of Information Act (FOIA) request seeking the above referenced information from the U.S. Consumer Product Safety Commission (Commission). The record from the commission files responsive to your request has been processed and a copy of the releasable responsive record is enclosed. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file **FE00-0011**, and are identified as Hazard Assessment memoranda, correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees and contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information.

The enclosed records include **(8) Epidemiologic (In-Depth) Investigation Reports** with the underlying and supporting documentation and the related product complaints or reported incidents where available. The Commission has received this information from its formal investigation systems. Through these systems, the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff has examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.



Page 2 – Mr. Lawson
S-6020124

Also enclosed are (19) record pertaining to product complaints and reported incidents submitted to the Commission by a consumer; his or her attorney; or others. The consumer or submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborates the substance of the information contained in the complaint and reported incident.

We must withhold the records responsive to your request, specifically, the records from the Commission's Office of Compliance's active litigation and law enforcement investigatory file CA040012, Royal Paper shredder, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The file also contains proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

The other records from the Commission files responsive to your request relate to product complaint(s) and reported incident(s) that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

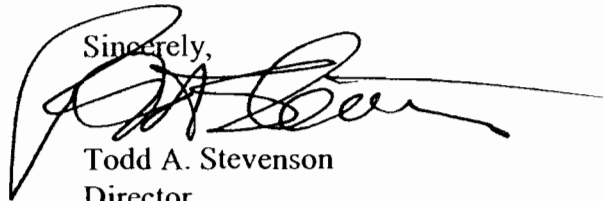
Page 3 – Mr. Lawson
S-6020124

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

You will note that information in the documents disclosed that could identify injured parties and persons treating them has been deleted pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), and section 25(c) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2074(c)(1). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on CPSA section 25(c), which prohibits the disclosure of such identities without the consent from the individuals.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 Bethesda, MD 20814.

Processing this request, performing the file searches and preparing the information, cost the Commission \$120.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have questions, contact Todd Stevenson by letter, facsimile (301) 504-0127 or telephone (301) 504-7923.

Sincerely,

Todd A. Stevenson
Director
Office of the Secretary

Enclosures



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Todd A. Stevenson
Director • Office of the Secretary
Division of Information Management • Office of Information and Technology

RECEIVED

MAY 01 2006
MPA QWJ
Atkinson, Haskins, Nellis,
Brittingham, Gladd & Carwile

Tel: 301-504-6836
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

April 28, 2006

Gabe W. Lawson
Atkinson Haskins Nellis Brittingham Gladd & Carwile
1500 Parkcentre
525 South Main
Tulsa OK 74103-4524

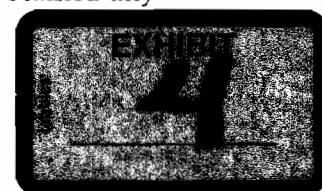
Re: FOIA Request S6040117: Royal HT500X, Royal 7X and Royal VF-700 Cross-cut Paper Shredders / Complaints, Reported Incidents and Investigations of Incidents and Commission's Office of Compliance Corrective Action or Recall Files

Dear Mr. Lawson:

This is a partial response to your Freedom of Information Act (FOIA) requests seeking information from the U.S. Consumer Product Safety Commission (Commission). Based on our telephone conversation, I have reopened your request dated February 23, 2006, to repeat a file search for corrective action files and testing of your sample and to provide some materials that may not have been released with our previous response to your request dated April 21, 2006. We will contact as that process is completed.

The enclosed records constitute two Epidemiologic Investigation Reports with the underlying and supporting documentation. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff has examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to two product complaints and reported incidents that were submitted to the Commission by consumers and others. The consumers or submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any

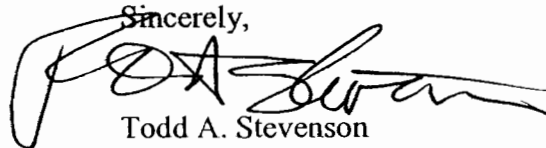


Gabe W. Lawson
Atkinson Haskins Nellis Brittingham Gladd & Carwile
Page 2

evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents. In the complaints and reported incidents we have removed the identities of the complainants at their request.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

We are continuing to process your request. Processing this request to this time, performing the file searches and preparing the information, cost the Commission \$40.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures



MAY 15 2006
GWL
Atkinson, Haskins, Nellis,
Brittingham, Gladd & Carwile

U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Todd A. Stevenson
Director • Office of the Secretary
Division of Information Management • Office of Information and Technology

Tel: 301-504-6836
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

May 11, 2006

CERTIFIED MAIL

Gabe W. Lawson
Atkinson Haskins Nellis Brittingham Gladd & Carwile
1500 Parkcentre
525 South Main
Tulsa OK 74103-4524

Re: FOIA Request S6040117: Royal HT500X, Royal 7X and Royal VF-700 Cross-cut Paper Shredders / Complaints, Reported Incidents and Investigations of Incidents and Commission's Office of Compliance Corrective Action or Recall Files

Dear Mr. Lawson:

This is the final response to your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

We must withhold all of the records responsive to your request that are contained in the active litigation and law enforcement investigatory files or corrective action or recall files, CA040012 and RP040071, Royal paper shredders, models 7X and HT500X and Royal 7, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal



Gabe W. Lawson
Atkinson Haskins Nellis Brittingham Gladd & Carwile
Page 2

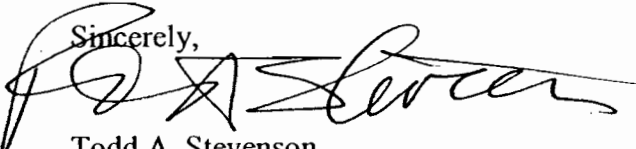
information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The files also contain proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408.

Processing this request, performing the file searches and preparing the information, cost the Commission \$80.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

**ATKINSON, HASKINS, NELLIS,
BRITTINGHAM, GLADD & CARWILE**

A PROFESSIONAL CORPORATION

ATTORNEYS

1500 PARKCENTRE

525 SOUTH MAIN

TULSA, OKLAHOMA 74103-4524

TELEPHONE (918) 582-8877

E-MAIL: ahnmail@ahn-law.com

FAX (918) 585-8096

MICHAEL P. ATKINSON*
WALTER D. HASKINS*
GREGORY D. NELLIS*
GALEN L. BRITTINGHAM*
JOHN S. GLADD
JOHN J. CARWILE
WILLIAM A. FIASCO
JAMES N. EDMONDS
MARK W. MAGUIRE
JENNIFER R. ANNIS
MARTHA J. PHILLIPS
MARTHANDA J. BECKWORTH
ERIC J. BEGIN

*PROFESSIONAL CORPORATION
† ALSO ADMITTED IN TEXAS

CAROL J. ALLEN
GABE W. LAWSON
ANDREW C. JAYNE
J. CRAIG BUCHAN
STACIE L. HIXON
JAMIE A. ROGERS
CHRISTY M. WATKINS
ANTHONY F. GOROSPE
JASON M. LILE

OF COUNSEL

K. CLARK PHIPPS†

MEDICAL STAFF

BEVERLY J. RUBINO, M.D.
(NOT LICENSED TO PRACTICE LAW)

May 25, 2006

VIA FEDERAL EXPRESS

FOIA APPEAL

General Counsel

Attn: Office of the Secretary

U.S. Consumer Product Safety Commission

4330 East West Highway

Bethesda, Maryland 20814-4408

Re: FOIA Appeal RE: Royal paper shredders
Our File No. 334-378

Dear Sir or Madam:

I am writing to appeal the Consumer Product Safety Commission's denial of access to records under the Freedom of Information Act, received by my office on April 27, 2006, May 1, 2006, and May 15, 2006. I have enclosed the denial letters from the Director of the Office of the Secretary for your review. Please also find enclosed my two letters seeking information under FOIA from the CPSC. You will find that I generally requested on behalf of my client the following:

1. Any information relevant to evaluation of potential defects in the Royal HT500X, Royal 7X, Royal VF-800, or Royal VF-700 cross-cut paper shredders;
2. Any documents, evaluations, or opinions promulgated by your agency in an evaluation of the Royal HT500X, Royal 7X, Royal VF-800, or Royal VF-700 cross-cut paper shredders;
3. Any documentation or information in your possession concerning any investigation of hazards presented by the Royal HT500X, Royal 7X, Royal VF-800, or Royal VF-700



cross-cut paper shredder for the years 2000 to the present, including, but not limited to, any evaluation of whether a guard on the feeding mechanism of the shredder should have been used to prevent injury to small fingers, whether your agency determined that the shredder was defective because of the failure to include any such guard, or any evaluation by your agency as to the adequacy of the warnings to users with small hands included with the Royal HT500X, Royal 7X, Royal VF-800, or VF-700 cross-cut paper shredder or any reference to any failure of Royal to include sufficient warnings with the Royal HT500X, Royal 7X, Royal VF-800, or VF-700 cross-cut paper shredder.

4. We request any documents, opinions, or evaluations of potential hazards to consumers of any paper shredder designed, marketed, manufactured, or distributed by Royal Consumer Information Products for the years 1980 to the present, including by not limited to, any hazard associated with the feeding mechanism and any failure to include a proper guarding mechanism on the feeder to protect the hands of consumer.
5. Any and all information regarding other similar incidents/injuries caused by the Royal 7X, Royal HT 500X, Royal VF-800, or Royal VF-700 cross-cut paper shredder.
6. Any and all correspondence between Consumer Product Safety Commission and Royal Consumer Information Products relating to the Royal HT500X, Royal 7X, Royal VF-800, or VF-700 cross-cut paper shredder.
7. Any and all notes and/or other documentation pertaining to conversations between anyone at the CPSC and Royal Consumer Information Products (inclusive of any employees of Royal and/or their attorneys) pertaining to the Royal HT500X, Royal 7X, Royal VF-700, and Royal VF-800.

The C.P.S.C. provided a total of (10) Epidemiologic Investigation Reports with underlying and supporting documentation as well as a total of (21) product complaints and reported incidents that were submitted to the Commission by consumers and others. The C.P.S.C. withheld several files, citing authority as follows:

File Number	File Description	Authority cited
CA040012	Active litigation and law enforcement investigatory file	FOIA exemptions 5 and 7(A) FOIA exemptions 3 and 4 Section 6(a)(2) of CPSA
RP040071	Active litigation and law enforcement files or corrective action or recall files	FOIA exemptions 5 and 7(A) FOIA exemptions 3 and 4 Section 6(a)(2) of CPSA

No identifying file number	product complaints and reported incidents the Commission obtained from consumers, attorneys, and others	FOIA exemption 3, 5 U.S.C. section 552(b)(3) and section 6(b)(1) CPSA, 15 U.S.C. section 2055 (b)(1) and 16 C.F.R. section 1101.32
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As is evident from Mr. Stevenson's letter, the CPSC has simply asserted blanket exemptions to our request, without providing any detail whatsoever from which it can be determined whether these exemptions actually apply, and providing no information with which this office may adequately challenge the applicability of these provisions. I respectfully request that the CPSC reconsider its denial and provide the documents requested, or provide a Vaughn index with which we can identify the information in sufficient detail to determine whether these items have been lawfully withheld under the cited Exemptions.

"FOIA mandates disclosure of records held by a federal agency." See e.g. *Department of the Interior v. Klamath Water Users Protective Assoc.*, 532 U.S. 1, 7 (2001). While 5 U.S.C. § 552(b) provides certain enumerated exemptions, "the limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *Id.* at 8. (quoting *Department of Air Force v. Rose*, 425 U.S. 352 (1976)). These exemptions are to be construed narrowly. *Klamath*, 531 U.S. at 8. The government, and not the requesting party, bears the burden of demonstrating the claimed exemptions apply. See *Church of Scientology Intl. v. U.S. Dept. of Justice*, 30 F.3d 224, 228 (1st Cir. 1994).

Where an agency claims exemptions to preclude disclosure, the agency must provide the requesting party with sufficient detail for the requesting party to assure that claims of allegations are justified, and to challenge those documents. Generalized allegations of exemptions are not acceptable. See *Vaughn v. Rosen*, 484 F.2d 820 (D.D.C. 1973) cert denied 415 U.S. 977. See also *Mead Data Central, Inc. v. United States Dept. of the Air Force*, 566 F.2d 242, 251 (D. D.C. 1977) ("when an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply . . ."); *RCA Global Comm. Inc. v. Fed. Comm. Comm'n*, 524 F.Supp. 579, 586 (D. Del. 1981) (" . . . the record must be sufficient to demonstrate the Government's right to exemption as to each category of document . . . the agency's justification of its claim to exemption 'must not consist of "conclusory and generalized allegations of exemptions.'" What is required is 'a fairly detailed analysis in manageable segments.'") (citations omitted); *Hale v. United States Department of Justice*, 226 F.3d 1200 (10th Cir. 2000) (holding that, if the government relies on inference of confidentiality, it must present court with an affidavit providing sufficient detail on source-by-source basis to support inference).

As demonstrated, bare assertions of privilege are insufficient to justify the withholding of documents under FOIA. Though the CPSC has cited the particular exemptions it claims apply to the documents requested, it has also provided absolutely no detail or description from which it can be determined whether these exemptions actually apply. The CPSC's denial is clearly inadequate on its

face. Moreover, the lack of any detail whatsoever precludes my client from making a sufficient and thorough objection to the applicability of the particular exemptions asserted by the CPSC. However, to the extent we are able to do so, we pose the following objections for your consideration upon review of this appeal.

First, the CPSC has asserted Exemption 5, pursuant to U.S.C. §§ 552(b)(5), protecting disclosure of “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” The CPSC has generally represented that the records being withheld “consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission’s technical and legal staffs . . . [and] constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privilege.”

For any document to meet this privilege, it must satisfy two conditions, “its source must be a Government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it.” *Klamath*, 532 U.S. at 8. Courts have generally recognized that documents that would not be obtainable by law due to attorney-client privilege, work product privilege, or deliberative process privilege may not be discoverable. See e.g. *Tigue v. United States Dept. of Justice*, 312 F.3d 70, 76 (2d Cir. 2002); *National Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). Such privileges would generally apply to documents “reflecting advisory opinions, recommendations and deliberations of the agency. *NLRB*, 421 U.S. at 50. See also *Center for Intl. Env. Law v. Office of the U.S. Trade Rep.*, 237 F. Supp.2d 17, 24 (D.D.C. 2002)(deliberative process privilege applies only to inter-agency or intra-agency documents which are predecisional and part of the agency’s deliberative or decision making process). As in any other case, any work product privilege asserted over agency documents must be “prepared in anticipation of litigation or for trial by or for another party or for that other party’s representative.” See *Fed. R. Civ. P. 26(b)(3)*; *Badalamenti v. United States Dept. of State*, 899 F. Supp. 542, 548 (D. Kan. 1995); *NLRB*, 421 U.S. 132, 156.

The CPSC has given absolutely no detail from which it can be determined if any document in its possession was (1) prepared by the agency; (2) prepared by its attorneys; (3) is predecisional; or (4) is in anticipation of litigation. First, the CPSC has not clarified when its investigation of the Royal 7x Crosscut paper shredder began, and has not confirmed if that investigation is still pending, or what stage of the process the CPSC is currently pursuing. Further, not all agency documents are privileged under Exemption 5. It is unlikely that all such documents in your possession fit here. For example, we are aware of correspondence drafted by Royal or its attorney(s) to the C.P.S.C. regarding the recall of at least the 7X and HT500X shredders. Exemption 5 would not apply. Documents provided by an outside, non-consulting party are not protected by Exemption 5. See e.g. *Klamath*, 532 U.S. at 12-13. Royal is not a consulting party, but a party adverse to CPSC with a personal interest in the outcome of the investigation. Therefore, any documents produced by Royal, or any non-consulting party may not be withheld under Exemption 5. *Id.*

In addition, Plaintiffs sought information with respect to the CPSC’s investigation of other several Royal shredders. We know the C.P.S.C. took the VF-800 shredder owned by the Eremitas (a

client of ours) and tested it for potential hazards/defects. Certainly the C.P.S.C. is not contending they should be allowed to take the Eremita's shredder, test/evaluate it, and then not provide the test results. Even where the CPSC might contend its investigation of the various Royal shredders, including the VF-800, is pending, or documents related to that shredder are predecisional, that contention is clearly inapplicable to any earlier investigations by the CPSC which have closed and resulted in a final opinion. The CPSC has failed to indicate whether any such documents for other Royal shredders exist, and whether investigations for those shredders are pending. Therefore, we respectfully request that, to the extent the CPSC maintains that the documents requested regarding the Royal shredders are protected under Exemption 5, that the CPSC provide information as to the source or author of those materials, whether those materials were drafted by counsel, the dates they were authored, what models the CPSC are investigating, including but not limited to the Royal 7x, Ht500X, VF-800, or VF-700 Crosscut shredders, if any of those investigations have resulted in final opinions, and any other details which would clearly demonstrate the applicability of the privilege.

Further, the CPSC has claimed protection for the documents under Exemption 7, 5 U.S.C. § (b)(7), which protects from disclosure "records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings." Exemption 7 is generally viewed to protect "privacy interest of law enforcement personnel, as well as third parties in whom law enforcement has an investigatory interest. . . ." *Badalamenti*, 899 F. Supp. 542 (D. Kan. 1995). When that privilege is claimed, "(1) the head of the department having control over the documents must raise a formal claim of privilege; (2) the department head must assert the privilege based on his or her actual personal consideration of the documents; and (3) the claimant must make a detailed specification of the information for which the privileged is claimed, with an explanation why this information properly falls within the scope of the privilege." *In re Polypropylene Carpet Antitrust Litigation*, 181 F.R.D. 680, 687 (N.D. Ga. 1998).

Information is compiled for "law enforcement purposes" only where the "investigative activities giving rise to the compilation of records [are] related to the enforcement of federal law and there must be a rational connection between the investigative activities and the agency's law enforcement duties." *Western Journalism Center v. Office of the Ind. Counsel*, 926 F. Supp. 189, 191 (D.D.C. 1996). Documents compiled for administrative, rather than for the purpose of enforcing a federal law, are not exempt. *Church of Scientology of Calif. v. United States Dept. of Army*, 611 F.2d 738, 748 (9th Cir. 1979). Further, 5 U.S.C. § 7(b)(7)(D) specifically indicates that it is not enough that documents that are simply records or information compiled for law enforcement purposes, but such documents should only be withheld if they could "could reasonably be expected to disclose the identify of a confidential source" See *Hopkinson v. Shillinger*, 866 F.2d 1185 (10th Cir. 1989).

The CPSC has failed to provide sufficient information in its denial of our request to determine whether the documents it seeks to withhold were prepared for the purpose of enforcing a federal law, as opposed to purely administrative purposes. Further, the CPSC has made no effort to establish that these documents, if compiled for law enforcement purposes, contain information from confidential sources which would preclude their disclosure. In addition, courts have recognized that the privacy interests protected by Exemption 7 applies "only if the privacy interests outweigh the public interest in

disclosure.” Badalamenti, 899 F.Supp. at 549. See also *In re Polypropylene Carpet Antitrust Litigation*, 181 F.R.D. at 688, in which the court considered:

(1) the extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information; (2) the impact upon persons who have given information of having their identities disclosed; (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure; (4) whether the information sought is factual data or evaluative summary; (5) whether the party seeking discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question; (6) whether the police investigation has been completed ; (7) whether any interdepartmental disciplinary proceedings have arisen or may arise from the investigation; (8) whether the plaintiff's suit is non-frivolous and brought in good faith; (9) whether the information sought is available through other discovery or from other sources; and (10) the importance of the information sought to the plaintiff's case.

Id. at 688.

Because CPSC has not provided any detail as to the type of documents it is withholding from disclosure under Exemption 7, it difficult for us at this time to elaborate upon whether those particular documents might thwart the CPSC's process, would impact any “confidential sources” in the documents, would chill governmental self-evaluation, or implicate interdepartmental workings. However, we can demonstrate at this time that the information sought is of extreme importance to the public interest.

This office is aware of twenty children injured by Royal shredders, several of whom, including Sam Eremita, were injured as late as Fall 2005. This office represents fifteen of those small children injured by the defects in the Royal Crosscut shredders, and is pursuing legal action against Royal Consumer Information Products for these children's damages by the defective product. It is our contention that these children's injuries are the result of Royal's failure to consider the safety of children in its products when it designed and tested those products. We are currently in the process of discovery in several actions. However, we have as yet been unable to procure certain information from Royal, such as all correspondence from Royal to the C.P.S.C. relating to their paper shredders. Royal has also denied liability. Despite the fact that multiple children have been injured by models of shredders designed for home or office use, Royal has, to our knowledge, made no effort to issue recall notices for those shredders. Information provided by the CPSC would aid this office in pursuing its cases against Royal. These actions will hopefully impress upon Royal the need to alter its designs and testing of the products, and convince Royal that children's safety must be taken into account in products designed for home use. Our clear need of any information the CPSC can provide with regard to its evaluation of Royal shredders, and the fact that we have been unable to obtain such information elsewhere, justifies production by the CPSC of information protected by Exemption 7.

In short, Royal is obviously unwilling to pull their dangerous shredders from the market, despite the C.P.S.C.'s request in November 2004, and despite the fact that at least twenty children have been injured in incidents involving Royal paper shredders. In order to bring justice to the families affected

by Royal paper shredders, we need the documents held by the C.P.S.C. We are most interested in obtaining all correspondence between the C.P.S.C. and Royal relating to any model of Royal cross-cut paper shredder and any documents related to the testing/evaluation by the C.P.S.C. of the Royal 7X, Ht500X, VF-800, and VF-700. We respectfully appeal the CPSC's denial of our request under the Freedom of Information Act. It is apparent that the CPSC has failed to supply sufficient detail regarding the documents withheld from disclosure to justify withholding those documents at this time. Therefore, we request that you again review the documents responsive to our requests. To the extent that you continue to maintain those documents fall within the above-stated Exemptions, we request that you submit an appropriate Vaughn index or other equally-sufficient means of showing that the documents do fall within the claimed exemptions. In the alternative, we would be happy to travel to Washington, D.C. to review the documents in order to determine whether we believe the Commission's withholding of such documents is justified. Any documents which you determine do not fall within these exemptions should be submitted to this office.

We appreciate your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gabe W. Lawson", followed by a long horizontal line extending to the right.

Gabe W. Lawson

GWL/jja

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U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Page C. Faulk
General Counsel

Tel: 301-504-7625
Fax: 301-504-0403
Email: pfaulk@cpsc.gov

June 27, 2006

Gabe Lawson, Esq.
Atkinson, Haskins, Nellis, Brittingham, Glad & Carwile
1500 Park Centre
525 South Main
Tulsa, Oklahoma 74103-4524

RE: FOIA Appeal 6020124 - Royal VF-800 Cross Cut Paper Shredder

Dear Mr. Lawson :

By letter dated May 25, 2006 you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your above-referenced Freedom of Information Act (FOIA) requests.

Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. Since the responsive documents are contained in an investigation file for a case that is still open, the FOI Officer's decision to withhold them was legally correct and I must affirm it based on FOIA Exemptions 3, 5 and 7(A). 5 U.S.C. § 552(b)(3), (b)(5) and (b)(7)(A).

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld files, I am relying on Sections 6(a)(2) and (b)(1) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(a)(2), (b)(1).

Section 6(a)(2) of the CPSA, incorporating FOIA Exemption 4, expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. Pursuant to Section 6(a)(3) of the CPSA, 15 U.S.C. § 2055(a)(3), the Commission must submit the materials from the investigation file to the manufacturer prior to releasing those materials and the manufacturer may mark certain information as confidential. The staff must then evaluate the claims of trade secret or commercial information in accordance with Section 6(a)(5) of the CPSA. 15 U.S.C. §



2055(a)(5). Because the cases are still under investigation, the Commission has not yet processed any possible claims of confidentiality under this provision.

Section 6(b)(1) of the CPSA requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The Commission has not yet taken the necessary reasonable steps required by Section 6(b)(1). Other information being withheld pursuant to Exemption 3, based on Section 6(b)(1) consists of unconfirmed consumer complaints and staff notes and correspondence with Royal about their section 15 report. With respect to unconfirmed consumer complaints, when consumers submit complaints to the Commission, we send them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send them a franked envelope for returning the confirmation. This process, which is voluntary on the part of the consumer, has been in place since 1983. The Commission has determined that unconfirmed consumer complaints should not be disclosed because reasonable steps have not been taken to assure their accuracy. See 16 C.F.R. § 1101.32(a)(3). In this case, because the consumers did not respond to our request for confirmation of the complaints, they remain unconfirmed, and are being withheld.

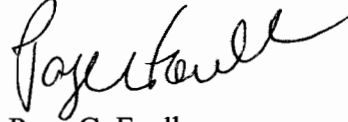
However, when the files are closed, our FOI Officer will process them under CPSA Sections 6(a) and (b). Some information may then become available to the public, and other information may continue to be exempt from disclosure. I suggest that you check periodically with our FOI Office on the status of the requested files.

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents which would not be available by law to a party in litigation with the agency. 5 U.S.C. § 552(b)(5). The draft staff memoranda, analyses, evaluations, preliminary determination and staff notes withheld here consist of staff recommendations, containing both pre-decisional and deliberative discussions. The deliberative process privilege protects advice, recommendations, and opinions that are part of the agency's deliberative, consultative and decision-making processes. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Release of this information would impair the Commission's decision-making ability with respect to product investigations by impairing open and frank communication within the agency.

Exemption 7(A) of the FOIA provides for the withholding of investigatory information compiled for law enforcement purposes, but only to the extent that production of such information could interfere with enforcement proceedings. 5 U.S.C. § 552(b)(7)(A). We have determined that the disclosure of these documents before the closing of the investigation could reasonably be expected to interfere with law enforcement proceedings.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Page C. Faulk", written in a cursive style.

Page C. Faulk



JUL 17 2006
GWL
Atkinson, Haskins, Nellis,
Brittingham, Gladd & Carwile

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Page C. Faulk
General Counsel

Tel: 301-504-7625
Fax: 301-504-0403
Email: pfaulk@cpsc.gov

June 27, 2006

Gabe Lawson, Esq.
Atkinson, Haskins, Nellis, Brittingham, Glad & Carwile
1500 Park Centre
525 South Main
Tulsa, Oklahoma 74103-4524

RE: FOIA Appeal S6040117 - Royal HT500X, Royal 7X and Royal VF-700
Cross-cut Paper Shredders

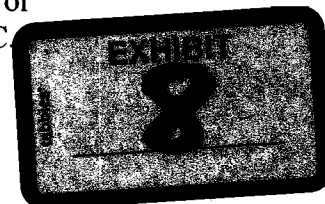
Dear Mr. Lawson :

By letter dated May 25, 2006 you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your above-referenced Freedom of Information Act (FOIA) request.

Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. Since the responsive documents are contained in investigation files CA040012 and RP040071 for cases that are still open, the FOI Officer's decision to withhold them was legally correct and I must affirm it based on FOIA Exemptions 3, 5 and 7(A). 5 U.S.C. § 552(b)(3), (b)(5) and (b)(7)(A).

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld files, I am relying on Sections 6(a)(2) and (b)(1) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(a)(2), (b)(1).

Section 6(a)(2) of the CPSA, incorporating FOIA Exemption 4, expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. Pursuant to Section 6(a)(3) of the CPSA, 15 U.S.C. § 2055(a)(3), the Commission must submit the materials from the investigation file to the manufacturer prior to releasing those materials and the manufacturer may mark certain information as confidential. The staff must then evaluate the claims of trade secret or commercial information in accordance with Section 6(a)(5) of the CPSA. 15 U.S.C.



2055(a)(5). Because the cases are still under investigation, the Commission has not yet processed any possible claims of confidentiality under this provision.

Section 6(b)(1) of the CPSA requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The Commission has not yet taken the necessary reasonable steps required by Section 6(b)(1).

However, when the files are closed, our FOI Officer will process them under CPSA Sections 6(a) and (b). Some information may then become available to the public, and other information may continue to be exempt from disclosure. I suggest that you check periodically with our FOI Office on the status of the requested files.

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents which would not be available by law to a party in litigation with the agency. 5 U.S.C. § 552(b)(5). The draft staff memoranda, analyses, evaluation and preliminary determination and staff notes contain both pre-decisional and deliberative discussions. The deliberative process privilege protects advice, recommendations, and opinions that are part of the agency's deliberative, consultative and decision-making processes. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Release of this information would impair the Commission's decision-making ability with respect to product investigations by impairing open and frank communication within the agency.

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Sincerely,

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